

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO RAMSEY,

Petitioner,

CASE NO. 1:13-CV-1210

v.

HON. ROBERT J. JONKER

WILLIE SMITH,

Respondent.

**ORDER AFFIRMING DECISION OF MAGISTRATE JUDGE and
APPROVING AND ADOPTING REPORT AND RECOMMENDATION**

1. Appeal of Magistrate Judge's Decision

Petitioner appeals the Magistrate Judge's Order denying his motion for discovery. ECF Nos. 26, 30, 31.)

In considering an appeal of a magistrate judge's ruling on a nondispositive pretrial motion, the Court applies a "clearly erroneous or contrary to law" standard of review. *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)); accord *Brown v. Wesley's Quaker Maid, Inc.*, 771 F.2d 952, 954 (6th Cir. 1985) (citing 28 U.S.C. § 636(b)(1)(a)); see also FED. R. CIV. P. 72(a) (District judge must consider timely objections to nondispositive pretrial orders of magistrate judge and modify or set aside any part of order that is clearly erroneous or is contrary to law.) A finding is "clearly erroneous" when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been

committed.”” *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573 (1985) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

The Court finds no error in the Magistrate Judge’s decision. To the contrary, the Court finds the Magistrate Judge’s Order entirely proper. The Orders are factually sound and legally correct. Plaintiff’s appeal lacks merit. Petitioner’s appeal (ECF No. 31) is **OVERRULED**. The Magistrate Judge’s Order (ECF No. 30) is **AFFIRMED**.

2. Objections to Report and Recommendation

The Court has reviewed Magistrate Judge Kent’s Report and Recommendation in this matter (ECF No. 32) and Plaintiff’s Objections to the Report and Recommendation (ECF No. 33). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff’s objections. After its review, the Court finds that Magistrate Judge Kent’s Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends that Petitioner's habeas corpus petition be denied. Petitioner does not object to the Report and Recommendation's analysis rejecting the sufficiency of the evidence claim, and the Court is satisfied on independent review that the analysis is correct, in any event.

Petitioner does object to the Report and Recommendation's conclusion regarding the jury's allegedly improper learning that Defendant was a convicted sex offender. The Court overrules Petitioner's objections, because whatever the jury learned about a prior sex offender conviction was from the jury's careful and attentive evaluation of the exhibits admitted into evidence during the trial. Apparently neither the prosecutor nor defense counsel realized one of the exhibits was a residency document reporting a verified registry address for Petitioner. (Sentencing Hr'g Tr., ECF No. 25-11, PageID.1941-1944.) It is not unconstitutional for a jury to give more attentive care to exhibits than did the lawyers. Nor is there any reason to believe the jury's careful attention to this particular exhibit had any prejudicial impact on its overall consideration of the evidence of guilt, which included Petitioner's incriminating admissions to three separate people.

Nothing in Petitioner's Objections changes the fundamental analysis. The Court finds that denial of the habeas corpus petition is appropriate, for the very reasons detailed in the Report and Recommendation.

Before Petitioner may appeal the Court's dismissal of his petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); FED. R. APP. P. 22(b)(1). The Federal Rules of Appellate Procedure extend to district judges the authority to issue certificates of appealability. FED. R. APP. P. 22(b); *see also* *Castro v. United States*, 310 F.3d 900, 901–02 (6th Cir. 2002). Thus the Court must either issue a certificate of appealability indicating which issues satisfy the required

showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); FED. R. APP. P. 22(b)(1); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make the required “substantial showing,” the petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court does not believe that reasonable jurists would find the Court’s assessment of the claim Petitioner raised debatable or wrong.

ACCORDINGLY, IT IS ORDERED that Petitioner’s appeal of the Magistrate Judge’s Order denying his motion for discovery (ECF No. 31) is **OVERRULED**, and the Order (ECF No. 30) is **AFFIRMED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 32) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner’s Petition for Writ of Habeas Corpus (ECF No. 1) is **DENIED**.

IT IS FURTHER ORDERED that Petitioner’s request for a certificate of appealability is **DENIED**.

Dated: September 13, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE